

Att. Jonah. M.
(11 pgs)

IN THE PAAMA ISLAND COURT
OF THE REPUBLIC OF VANUATU
(Land Jurisdiction)

Land Case No. 03 of 2000

BETWEEN: HARRY HASLIN JOSEPH
Original claimant

AND: MAEL HOPA VOVI
Counter claimant 1

LIRO COMMUNITY
Counter claimant 2

Coram: Magistrate Edwin Macreveth
Justice Morris Wilkin
Justice Roy Morsen
Justice Mohil Tom

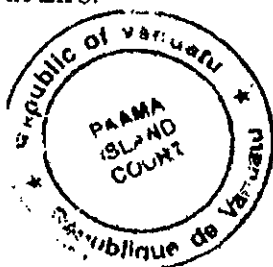
Clerk: Wendy Raptigh

Date of Hearing: 8th - 10th of April, 2008

JUDGMENT

The land in dispute is situated at the north western part of the island of Paama. This customary land is registered before this court as *Meteyang*. The advertisement caused by the principal disputant invited two parties to file a counter claim. The contentious issue for determination is land ownership.

Its boundary is generally described to be bounded by an old creek on the south which used to run down the sea shore fronting the secondary school's vicinity. This creek has in the past been buried by eroded soil which at date marked by an existing mango tree. The boundary mark between Liro and Meteyang divides up Vaum Junior Secondary School. From there it runs northwards to a heap of boulders known as Uru Ahaw. It then follows up the area eastwards to a waterhole. It then turns south following the footpath leading up to Liro Nesa and the Provincial sub-headquarter at Liro.



For specification purposes regarding its boundaries, refer to the advertised and sketch map filed therein by the original claimant.

Before engaging on the subject matter and for purposes of better understanding the reasoning of this judgment; a brief discussion of the relevant laws and custom processes and usages of the territory are outlined below.

THE LAW, CUSTOM AND HISTORY

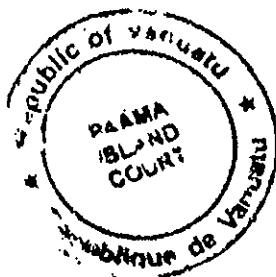
It is our immediate note is that the area of concern does not have a Land Policy. Despite of such missing guidelines, there is significant information gathered before the court regarding customary principles of land ownership. We have also consulted the Land Policies adopted by the National Council of chiefs, Malvatumaori. It shares a similar approach to the recognized custom practices of this district as discussed below.

Briefly, the relevant law under Article 73 of the 1980 Constitution stipulates that all land in the republic of Vanuatu belongs to the indigenous custom owners and their descendants. Article 74 provides that the rule of custom shall form the basis of ownership and use of land in Vanuatu. Article 95(3) states that customary law shall continue to have effect as part of the law of this jurisdiction.

Turning to the customary practices, generally the island of Paama is predominantly a patrilineal society. Ownership of customary land is communal or collectively owned based on common descent, residence within a nasara and participation in common activities. A tribe or bloodline is identified with the land through the nasaras. Individuals within the clan are closely tied up with their territory by affinity and consanguinity through blood and marriage.

It is the common trend that the first person to explore, live and control a land boundary would eventually become the original chief or ancestor of the territory. This ancestor on behalf of his tribe would normally regarded by incoming settlers as the original custom owner of the land. The members of his tribe or group communally own undivided interests on the land.

The clan which forms the land owning unit is normally based on blood relationship, meaning, they are all related by blood, having descended from a common or original ancestor. Practically, the first person and his family to arrive at the disputed land and built a nasara there, are the custom owners of the land. It makes no difference whether they left again for some other reasons, they would always be designated as the custom owners.



Land in the island of Paama is traditionally transferred or inherited patrilineally from the chief or original ancestor to the eldest son who would normally bear the responsibility for providing equal distribution of the deceased father's land to other siblings, relatives and kinship. This is a male predominated system which is twinned with the land tenure system handed down from generations to the present.

The only exceptional rule to the general principle of land ownership is that in the situation where there are no more surviving male heirs to the land then, ownership will pass on to the matrilineal lineage. This is typically seen where a woman's children having bloodline to the extinct patrilineal line are automatically given land ownership. Land may also be given to a woman upon her marriage as a gift traditionally known as *Veiat*. However, such offered land is returnable upon her death.

With regard to the issue of adoption, the traditional position is that an adopted male child would have the right to acquire land ownership on condition that his adoption is arranged within the family bloodline itself. An adopted claimant having no connection to the original ancestor or bloodline cannot inherit land of the father upon death but would be granted a limited right to use the land if there are existing heirs to the land. Land ownership always remain in the hands of the original owners of the land.

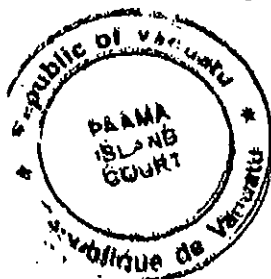
Boundaries of land in the past and present are normally indicated by natural features, such as trees, rivers, hills, man made features and other geographical phenomena.

Beside the application of law and custom principles, the court in determining the issue of ownership has reminded itself of the relevant provisions stipulated under section 25 of the Island Court Act, Cap 167. Also this court under section 10, of the Act has duty to administer the customary law prevailing within the territory and so far as the same is not in conflict with any written law and is not contrary to written justice, morality and good order.

Given the basic understanding of the traditional processes and the law, we now present the relevant information submitted before the tribunal commencing with the primary claimant.

Original Claimant

Harry Joseph Haslin in his presentation led evidence that Tukor is the original ancestor of the land of Meteyang. Tukor built his original nasara at the land also



called Meteyang. He had a brother by the name of Ulas and a sister, Lesalmahir who was married to Maki Taso of Liro. Tukor had two marriages. He first espoused Towmasing who begat Avock Sahe and Sakeren. Neman, Rutha, Levas and Vovi were born out of her second marriage.

He explained that Mael Hopa's father Vovi, was adopted by Tom Vase of Meteyang. He argued thereon that Vovi has been given his share of land comprising of four parcels of land to fulfill his adoption. His successor Mael Hopa is currently in possession the land cultivating them. He submits that CCI would have no more right to claim the land again.

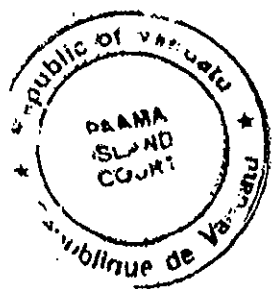
He went on to provide that Tom Vase son of Sakeren was taken for slavery labour in Queensland Australia during the era of Blackbirding. Upon his return between 1800-1900 he discovered that some of his relatives have died after being buried by a huge land slide. The land was never paid or neither was it given as a *Veiat* by the community of Liro and its chief.

In support of his claim he provided the following facts.

1. That Missionary Thomas Mill had wanted to buy the land from chief Sakeren with the amount of 10 shilling. Sakeren had refused the offer. A song was composed in remembrance of this event.
2. No one has disputed the land during a meeting chaired by Reddy Henry former Secretary of Paama Local Government Council.
3. He was once called by chief Headley in an attempt to resolve the dispute over the land.
4. That he still dispute a decision issued by the Tamaso Council of Chiefs in handing the land to the Liro community.
5. That Lennie a custom fortune teller from the island of Tanna had confirmed that the questioned land is part of Meteyang.
6. That Chief Hedley Avock had also told his sons, Charlie and Noel on the 4th of April, 2000 that the land belongs to Joseph Haslin.

It is his conclusion that based on the foregoing facts he believes that the land of Meteyang should rests under his ownership.

Witness, chief Charlie Headley Avock stated he had heard from his father on the 4th of April, 2000 that the land belongs to Joseph Haslin. Chief Timothy Kelep of Voravor in his statement provided that he knows that the land is part of Meteyang. Chief Sakeren had allotted him a piece of such land for use up to date. Elder Paul Ulas and Sanday Samson also witnessed that the land traditionally belongs to the primary claimant and his family.



During interrogation, he genuinely admitted with tears that he is closely related to Mael Hopa originating from the same bloodline. He is a competent and honest witness to his case and had maintained his proper statement throughout the course of questioning. While, CC2's posed questions to the claimant and his witnesses could not bring forth any important aspects of evidence to assist his claim.

Counter claimant 1

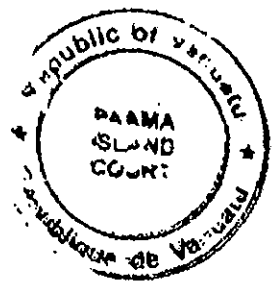
Mael Hopa in his claim told the court that he is also originated from chief Tukor original native of the land of Meteyang. This chief had two marriages. From his first marriage with Morasi with whom he had a son, Avock Sahi. Avock had four children namely, Joseph, Lency, Rebecca and William. Joseph and his wife had no child. Joseph therefore adopted Harry Haslin son of Tungon Marling.

After the death of Morasi, Tukor espoused lady Taku and they begat four children namely, Vovi, Rutha, Hungai and Neman. Sakeren's sons are Tom Vase and Hungai Seksek. Tom Vase had adopted his father, Vovi and Hungai Robson son of Tungon Marling a descendant of Hinuvoe. There are no other surviving bloodline of the land of Meteyang except Mael Hopa and his present generations.

Jannet Morris testified that her father Mael Hopa has been telling her since childhood that they are the custom owners of the land. While, her sister Hellen Hopa provided that she was a witness to a marriage ceremony of one late Sailas and Anis. At the course of sharing food items to the various nakamals, chief Yavet also presented some food to his father Mael Hopa as representative of Meteyang nasara. Her father is always regarded as the owner and native of Meteyang.

Takusam Human stated that Late Doreka has been telling them that Mouru who is Tom Vase's daughter has origin from the land of Meteyang. Following history Mael Hopa is a descendant of Tom Vase. There are no other surviving issues of this tribe except Mael Hopa and his family.

In whole the original claimant does not dispute CC1's claim except that he disputed him to have had his share of land given his adoption. This allegation was denied by Mael Hopa. Spokesperson for CC2 did asked some questions but elicited no helpful information in favour of his claim.



Counter claimant 2.

Chief Kora Vanosivi represented Liro community. In his statement of claim held that his great grand father Vanosivi has been living on certain parcels of land known as Atia and Vutekai at the disputed area. These plots of land have been in use for decades by his ancestors. Agricultural crops planted in the area are still in use.

His son Tekak is renown for his magical power. In the wake of the volcanic eruption in 2001 at Lopevi he was asked to calm the disaster. He argued thereon that no one had ever disputed the land belonging to his ancestor.

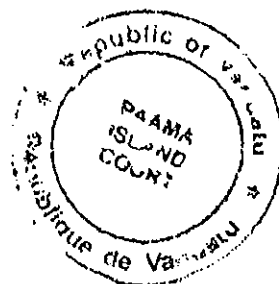
He added that the boundary limit owned by the Liro community rests near Mahit Kondy at Navuliamal ending at Hatili by the coastal area. Sakeren is a native of Liro who use to garden the land housing the secondary school.

He claims that family Obed also own land in the concerned area. He knows that Maki Hili had two children. A girl by the name of Era and a son known as Obed whose parcel of land is Vekane located also inside the secondary school grounds. He further argued also that the land occupied by Timothy Kelep is owned by Hungai of Liro. That plot of land was given to her sister in as a custom gift known as veiat. A village court has declared the land in favour of the Liro community in 1983.

His only witness Mael Maki Hilialong stated that the disputed land belongs to the Liro community. He argues that also he owns certain terrain as well as other claimants and dwellers from the Liro community. Upon questioning by the tribunal he had confirmed that the area in contest by Liro community was mainly used for subsistence farming purposes. No other fresh and important evidence is extracted from this witness.

Also cross examination, it seems that other claimant to the case have no knowledge of that village court proceeding. He has admitted that his original nasara is known as Venahor situated outside the disputed land. The area has been in use by his ancestors and present generations for gardening purposes.

Beside those admissions, the original claimant and CC1 have made comments refuting his alleged custom arrangement on the land. The original claimant and CC1 have also labeled his assertion over Sakeren's place of origin as false and fabricated. There are no other witness to provide confirmation of his presented evidence.



Analysis of evidence and findings

Having considered the evidence and in application of the law and custom we conclude in the following words.

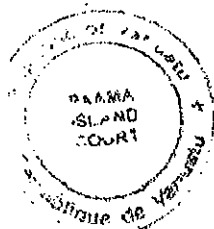
We are wholly persuaded that there was no real need to investigate and make findings as to who is really telling the truth in the case of the Harry Haslin and Mael Hopa. There is sufficient and clear evidence advanced to this court to draw conclusion that they have together originated from the same bloodline or tribe. Vovi, Mael Hopa's father was adopted within the bloodline itself.

In addition, there is common agreement and understanding between the duo. They are not disputing each other's genealogy except that relating to the sharing of land. That is not the subject matter for determination by this court this time but requires a separate future proceeding if, differences persist. The court's task at present is to consider the issue of ownership.

The posed question to answer is whether the OC and CC1 have any customary basis for their claim of ownership of the land. From our assessment and consideration of the entire evidence produced before us, the answer would be in the positive. Meaning we are satisfied with their evidence advanced given the forwarding grounds.

Firstly, there is evidence proving that the original claimant and CC1 do have a nasara called Meteyang stationed inside the disputed land. They are originated from chief Tukor, original ancestor of the land of Meteyang. There was not much objection from the opposing party over the credibility of their family tree and other relevant information in support of their claim. This is a weakness that leaves the tribunal to accept their evidence free of dispute as finding facts. The only question we noted to have been mostly asked to the claimants and their witnesses is whether half of the land housing the secondary school belongs to the Liro community. Both parties have been very honest to answer to that question in the affirmative confirming that Liro community does own a portion of it remaining outside the advertised land.

Secondly, it is obviously clear from the word of mouth of chief Kora that his original nasara is situated at some kilometers away from the contested area known as Venahor. The area claimed has been in use for gardening purposes by his ancestors to date marked by breadfruit trees and other crops thereon the land. This land occupation had occurred around the arrival of the early missionaries who thereafter stationed the Presbyterian mission at Liro. Witness, Maki Hiliialong has made confirmation to this vital piece of information.



Thirdly, it transpired from the facts at first instance that the land is claimed by a handful of claimants such as family Obed, Maki Hilialong his own witness in this case and others from Liro who have failed to pay the required fees and be part of the case. Our view is that it is totally impossible for an area comprising of less than 1000 square meter to be owned by 5 different tribes as shown in this claim. That piece of evidence is in essence self explanatory. It clearly indicates that realistically those claimants were in occupation of their claim areas on gardening purposes. The court could not find any other reasonable explanation to the circumstance.

Moreover, it is our common understanding that traditionally there should be a common ancestor to the land of Liro with its recognized boundaries. In our case, it could not be shown that all claimants from Liro community have originated from one single ancestor or nasara instead of having separate family trees and histories. Those missing information from CC2 have shed doubts in our minds.

On the other hand, we have carefully noted that it is only the area surrounding the secondary school that is largely contested by the parties. One push factor or reason for that high interest on the land may be influenced by the rental earnings from the government over the secondary school lease.

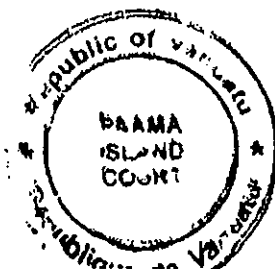
It is for the reasons highlighted above that we are concluding that CC2 has failed to substantiate sufficient evidence to establish the basis of his case. By way of comparison, Harry Haslin and Mael Hopa have more evidence in weight than that of CC2. Judgment would be in favour of the original claimant and CC1.

DECLARATION

In light of the foregoing deliberations, it is hereby this day adjudged in the following words:

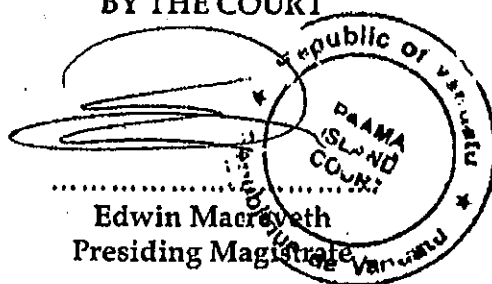
1. That Joseph Harry Haslin, Hopa Mael and their families be the custom owners of the land of Meteyang has claimed accordingly. A copy of the declared land is attached.
2. The counter claim by Kora Vanosivi on behalf of Liro community is hereby refused and dismissed.
3. All costs and expenses necessitated by this proceeding shall fall as found.

Any aggrieved party wishing to appeal this decision must do so within a period of 30 days upon receipt of the written judgment on the 29th of April, 2008.

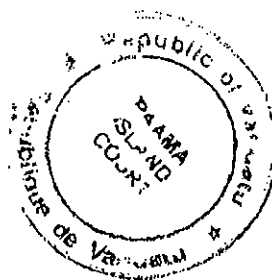


Dated at Liro Paama this 10th day of April, 2008

BY THE COURT

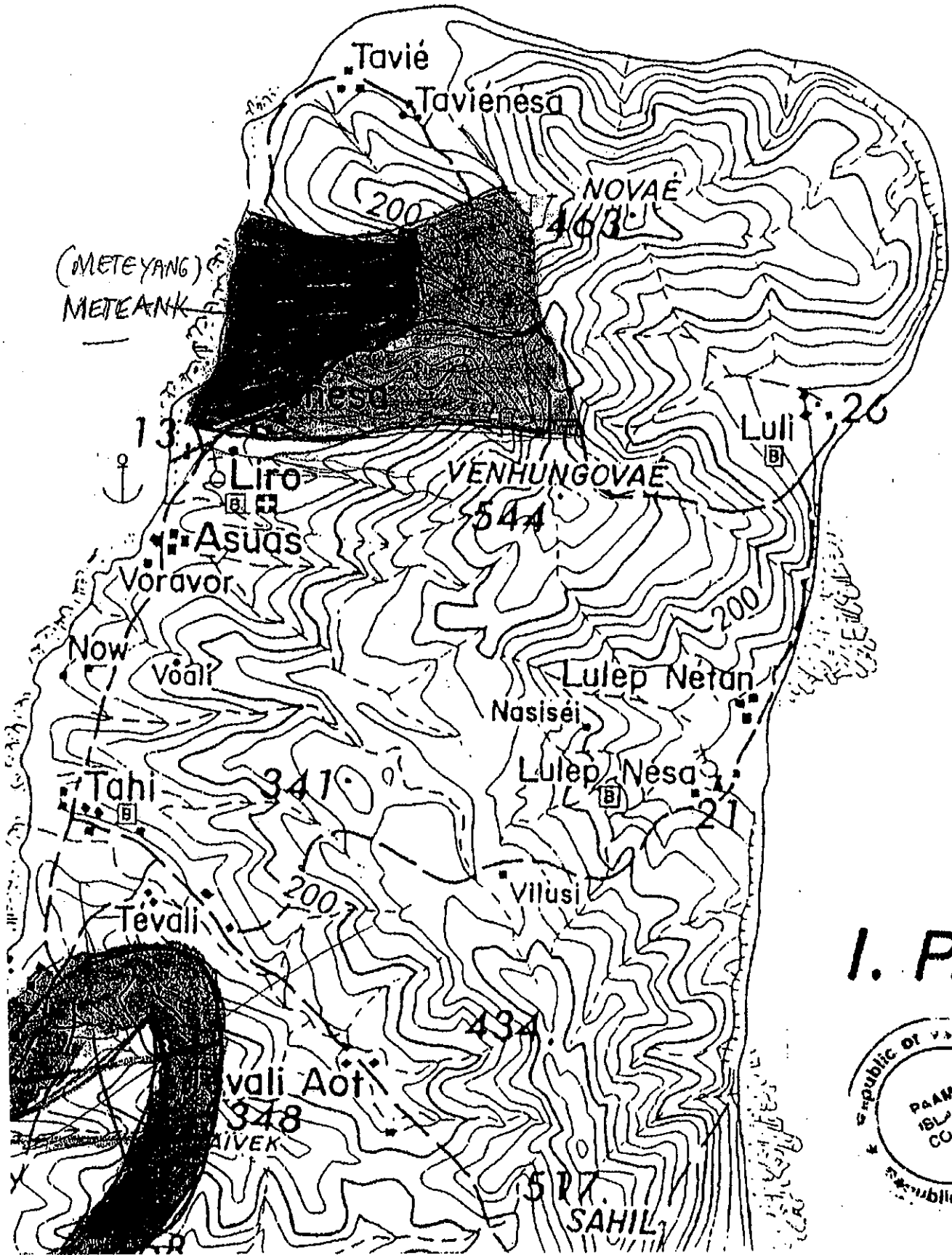


Edwin Macrae
Presiding Magistrate

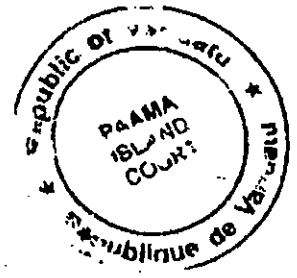


JONAA MESAU.

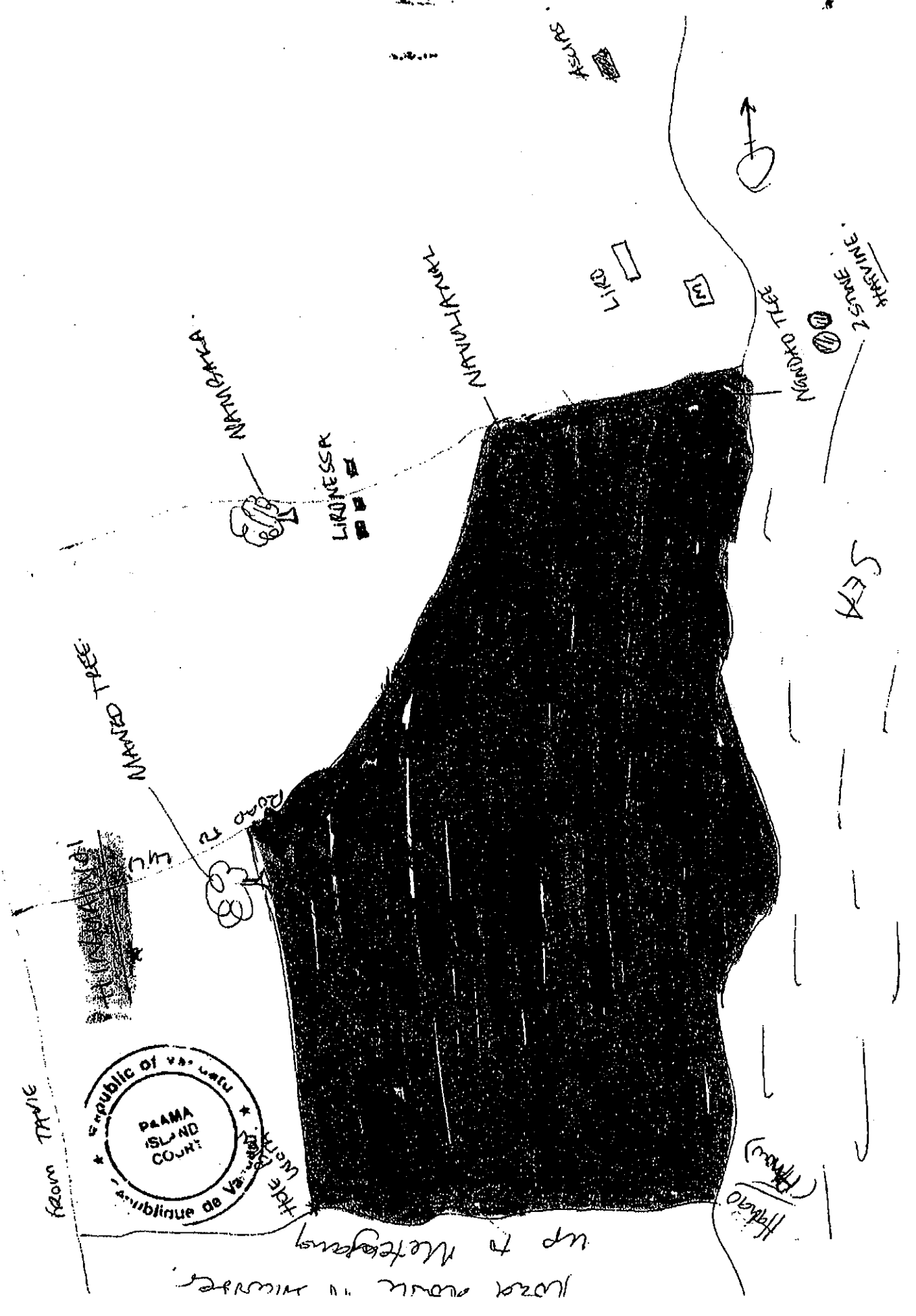
MAP SHOWING METEXANG LAND BOUNDARY



I. PAAM



Sketch Map Showing Metexang land



10000 square meters